

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANCELLOR WADE,

Petitioner,

v.

RICK HILL,

Respondent.

Case No. 2:22-cv-00556-WBS-JDP (HC)

ORDER GRANTING PETITIONER'S
APPLICATION TO PROCEED *IN FORMA
PAUPERIS*

ECF No. 2

FINDING THAT THE PETITION IS
UNEXHAUSTED AND RECOMMENDING
THAT IT BE DISMISSED WITHOUT
PREJUDICE

ECF No. 1

Petitioner, proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. After reviewing the petition, I find that his claims are unexhausted and recommend that it be dismissed.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it "plainly appears" that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner alleges that his conviction was obtained in violation of his Fourteenth Amendment rights. ECF No. 1 at 2-3. He states, however, that this habeas claim is still pending

1 before the California Supreme Court. *Id.* at 2. Thus, his claim is unexhausted. *See Scott v.*
2 *Schriro*, 567 F.3d 573, 582 (9th Cir. 2009) (“A petitioner satisfies the exhaustion requirement by
3 fully and fairly presenting each claim to the highest state court.”). Petitioner may re-file his
4 petition once he has exhausted his claims in state court.

5 Separately, petitioner appears to allege that his rights were violated when the clerk for the
6 California Supreme Court appointed unwanted counsel for him. ECF No. 1 at 16. This claim
7 does not directly implicate the propriety of petitioner’s conviction, however. Moreover, given
8 that his claim in front of the California Supreme Court is still pending, petitioner has not shown
9 that this appointment prejudiced him.

10 It is ORDERED that petitioner’s application to proceed in forma pauperis, ECF No. 2, is
11 GRANTED.

12 Further, it is RECOMMENDED that the petition, ECF No. 1, be DISMISSED without
13 prejudice as unexhausted.

14 These findings and recommendations are submitted to the U.S. District Court Judge
15 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
16 Practice for the United States District Court, Eastern District of California. Within fourteen days
17 of service of the findings and recommendations, petitioner may file written objections to the
18 findings and recommendations with the court and serve a copy on all parties. That document
19 must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
20 District Judge will then review the findings and recommendations under 28 U.S.C.
21 § 636(b)(1)(C).

22 IT IS SO ORDERED.

23
24 Dated: April 25, 2022


25 JEREMY D. PETERSON
26 UNITED STATES MAGISTRATE JUDGE
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